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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

KENNETH ROGERS, Plaintiff and Appellant, v. DONALD MASUDA et al., Defendants and Respondents.	C084919 (Super. Ct. No. 34201400169669CUFRGDS)

Plaintiff Kenneth Rogers appeals from a judgment entered after the trial court granted defendants' motion for judgment on the pleadings. The primary basis for the trial court's ruling was that Rogers's causes of action were barred by the applicable statute of limitations. Rogers has failed to demonstrate that the court erred in dismissing any of his causes of action on these grounds. Accordingly, we will affirm the judgment.

I. BACKGROUND

Rogers filed his initial complaint on October 2, 2014.

His operative complaint alleges six causes of action against his former attorneys, Donald Masuda and Kenny Giffard, including breach of fiduciary duty, constructive fraud, and conversion. The complaint alleges Giffard withdrew as Rogers's counsel in a separate criminal case in December 2010. Masuda withdrew as Rogers's counsel in the same proceeding earlier, and did not respond to a request for an accounting made by Rogers in April 2011. Defendants moved for judgment on the pleadings as to the operative complaint, and the trial court granted the motion and denied leave to amend. The trial court determined all of Rogers's causes of action were barred by the applicable statute of limitations. It also concluded that Rogers's third cause of action for fraud and concealment by Masuda was not pled with the requisite specificity. Judgment was entered accordingly, and Rogers timely appealed.

II. DISCUSSION

A. Standard of Review

" 'A judgment on the pleadings in favor of the defendant is appropriate when the complaint fails to allege facts sufficient to state a cause of action. [Citation.] A motion for judgment on the pleadings is equivalent to a demurrer and is governed by the same de novo standard of review.' [Citation.] 'All properly pleaded, material facts are deemed true, but not contentions, deductions, or conclusions of fact or law . . . .' [Citation.] Courts may consider judicially noticeable matters in the motion as well." (*People ex rel. Harris v. Pac Anchor Transportation, Inc*. (2014) 59 Cal.4th 772, 777.)

Additionally, orders and judgments are presumed to be correct, and the appellant must affirmatively show error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) "To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.] When a point is asserted without argument and authority for the proposition, 'it is deemed to be without foundation and requires no discussion by the reviewing court.'

[Citations.] Hence, conclusory claims of error will fail." (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.)

With respect to citations to the record, the appellant must "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." (Cal. Rules of Court, rule 8.204(a)(1)(C).) "If a party fails to support an argument with the necessary citations to the record, that portion of the brief may be stricken and the argument deemed to have been waived." (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.) In this appeal, Rogers's opening brief cites the critical document—his operative complaint—only twice in support of his legal arguments. As the reviewing court, we will not perform an independent, unassisted review of the record in search of error or grounds to support the judgment. (*McComber v. Wells* (1999) 72 Cal.App.4th 512, 522.)

In addition, the appellant must "[s]tate each point under a separate heading or subheading summarizing the point." (Cal. Rules of Court, rule 8.204(a)(1)(B).) "This is not a mere technical requirement." (*In re S.C.*, *supra*, 138 Cal.App.4th at p. 408.) It is designed so that we may be advised " 'of the exact question under consideration, instead of being compelled to extricate it from the mass.' " (*Ibid*.) "Failure to provide proper headings forfeits issues that may be discussed in the brief but are not clearly identified by a heading." (*Pizarro v. Reynoso* (2017) 10 Cal.App.5th 172, 179.) Moreover, any arguments raised or only supported by authority on reply have been waived. (*People v. Baniqued* (2000) 85 Cal.App.4th 13, 29.) These rules of appellate procedure apply to Rogers even though he is representing himself on appeal. (*McComber v. Wells*, *supra*, 72 Cal.App.4th at p. 523.)

With these principles in mind, we will now address two arguments in Rogers's briefing that made at least some reference to the relevant portion of the record.

B. Conversion

Rogers contends the trial court erred in concluding his cause of action for conversation was barred by the statute of limitations because it does not have a one-year statute of limitations. He alleges "this cause of action occurred on December 17, 2010, when defendant Giffard finally withdrew from legal representation of plaintiff Rogers." Even assuming this is true, Rogers did not file his action until October 2014, and he does not explain how his cause of action for conversion would be timely under whatever statute of limitations he believes did apply. "We are not bound to develop appellants' arguments for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contentions as waived." (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830.)

Regardless, Code of Civil Procedure section 340.6, subdivision (a)[1] provides, in relevant part: "An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first." In *Lee v. Hanley* (2015) 61 Cal.4th 1225 (*Lee*), our Supreme Court held that this provision "applies to claims that necessarily depend on proof that an attorney violated a professional obligation in the course of providing professional services unless the claim is for actual fraud." (*Id.* at p. 1239.) Rogers asserts that a cause of action for conversion does not have a one-year statute of limitations, but as *Lee* illustrates, whether section 340.6, subdivision (a) applies to a claim for conversion depends upon the allegations in the complaint. (*Lee*, *supra*, at pp. 1239-1240.) Rogers relies on the portion of this opinion explaining that "at least one

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[1] Undesignated statutory references are to the Code of Civil Procedure.

of [plaintiff]'s claims does not necessarily depend on proof that [defendant] violated a professional obligation in the course of providing professional services. Of course, [plaintiff]'s allegations, if true, may also establish that [defendant] has violated certain professional obligations, such as the duty to refund unearned fees at the termination of the representation ([former] Cal. Rules of Prof. Conduct, rule 3-700(D)(2)), just as an allegation of garden-variety theft, if true, may also establish a violation of an attorney's duty to act with loyalty and good faith toward a client. But because [plaintiff]'s claim of conversion does not necessarily depend on proof that [defendant] violated a professional obligation, [his or] her suit is not barred by section 340.6(a)." (*Id.* at p. 1240) However, our Supreme Court also explained that when a plaintiff's claim "hinge[s] on proof that [defendant] kept [his or] her money pursuant to an unconscionable fee agreement ([former] Cal. Rules of Prof. Conduct, rule 4-200) or that [defendant] did not properly preserve client funds (*id*., rule 4-100), [his or] her claim may be barred by section 340.6(a)." (*Ibid*.) And, in this case, under his cause of action for conversion, Rogers's complaint alleges defendants' treatment of his retainer fees and failure to provide an accounting violated various State Bar Rules of Professional Conduct, including rule 1.15 (former rule 4-100) regarding maintenance of records. Rogers does not acknowledge these allegations in this context,[2] but states in a conclusory manner and without reference to his complaint that "Masuda and Giffard's conduct was simple [theft] of plaintiff[']s property some $100,000.00." This is insufficient to establish that his complaint was not barred by section 340.6. Rogers has failed to establish error.

C. Constructive Fraud

Under the heading "Plaintiff [asserted] and plead [*sic*]a cause of action for fraud and concealment which has a three year statute of limitation from date of discovery

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[2] As a general matter, Rogers's briefing emphasizes the various professional obligations he believes defendants violated.

[November] 2015," Rogers cites his operative complaint exactly once, and it is in support of the statement that "Plaintiff in his second amended complaint plead [*sic*]that because of the fiduciary relationship between defendants Masuda and Giffard concealed the continuing fraudulent conduct of both defendants Masuda and Giffard." Rogers cites to his fourth cause of action for constructive fraud. The trial court did not address defendants' argument that this cause of action was not sufficiently pled. Rather, it entered judgment on the basis of the one-year statute of limitations set forth in section 340.6. (See *Quintilliani v. Mannerino* (1998) 62 Cal.App.4th 54, 69-70 [exception in section 340.6 for actual fraud does not apply to actions for constructive fraud resulting from breach of fiduciary duty].) Rogers has failed to demonstrate any error. He argues his complaint was timely because "the last overt act was Dec[ember] 17, 2010, and . . . the tolling provisions of [section] 352.1 tolled until Dec[ember] 17, 2012 the cause of action and three years from that date was Dec[ember] 17, 2015, so this action . . . was timely as a matter of law." This statement is not supported by a citation to the operative complaint or any further legal authority. Section 352.1, subdivision (a) provides: "If a person entitled to bring an action . . . is, at the time the cause of action accrued, imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than for life, the time of that disability is not a part of the time limited for the commencement of the action, not to exceed two years." To the extent Rogers argues his cause of action for constructive fraud did not accrue until December 17, 2010, he has not demonstrated that the statute of limitations still would not have run by the time he filed his complaint based on section 340.6. To the extent Rogers argues something else, he has failed to adequately support it with citation to authority or the record. Accordingly, he has failed to demonstrate error. [3]

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[3] We also reject Rogers's motion for summary reversal. *Sheppard, Mullin, Richter & Hampton, LLP v. J-M Manufacturing Co., Inc*. (2018) 6 Cal.5th 59 is not relevant to the

III. DISPOSITION

The judgment is affirmed. Respondents Donald Masuda and Kenny Giffard shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

/S/

RENNER, J.

We concur:

/S/

DUARTE, Acting P. J.

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HOCH, J.

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statute of limitations issues raised by this appeal. Additionally, Rogers filed a request that we take judicial notice of information regarding State Bar proceedings against defendants. We deferred ruling on this request for judicial notice and now deny it, without reaching the merits, on the ground that it is immaterial to our conclusion on appeal. Rogers also filed a request that we take judicial notice of his pending petition for review to exhaust state remedies in our Supreme Court. In the interim, the Supreme Court denied the petition. We thus deny Rogers's request for judicial notice of this petition as moot.